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LIMITATIONS ON TAXING POWER ARISING OUT OF THE SITUS OF THE PROPERTY TAXED.

1. *Chattels.*—It would seem to be an axiom that a state has no right to impose taxes upon persons or property beyond the limits of the state; its sovereignty extends no farther. As to real estate, it has never been claimed that such property could be taxed by any state other than that in which it is situated. And the same rule seems to be applied to personal property; but the difficulties arise in the application of the principle. Where the owner resides in one state and the property consists of goods and chattels which have an actual situs in another state, it is well settled that the owner is not to be taxed at his residence or domicile, for property situated in another state: *Hoyt* v. *Com'rs of Taxes*, 23 N. Y. 224; *State* v. *Ross*, 3 Zabriskie 517; *Mills* v. *Thornton*, 26 Ill. 300; *Carrier* v. *Gordon*, 21 Ohio 605; *Blood* v. *Sayre*, 11 Verm. 609; *Davenport* v. *Mississippi Railroad Co.*, 12 Iowa 539. Generally the owner of property is taxed at the place of his residence for all his personal property, but where the property has a visible and tangible existence, not at the domicile of the owner, and is permanently situated at another place, it is liable to taxation at the place of its situation. FIELD, J., in *State Tax on Foreign-held Bonds*, 15 Wall. 323–4; *Sangamon & M. Railroad Co.* v. *Morgan County*, 14 Ill. 163.

It has been thought that the statute of Massachusetts, which defines personal estate for the purposes of taxation, to include "goods, chattels, money and effects, wherever they are, ships, public stocks and securities, stocks in turnpikes, bridges and moneyed corporations within or without the state," asserts the principle that all personal property may be taxed with reference solely to the domicile of the owner, and without reference to the situs of the property: *Report of Commissioner Wells et al. to the New York Legislature on Taxation* (1871), p. 81. But this view is not sustained by the courts of Massachusetts. A. resided in Manchester, in the state of New Hampshire, owned a building in Lawrence, Massachusetts, standing by consent on the ground of another. In the discretion of assessors, under statute in Massachusetts, it might be taxed as real or personal estate. It was taxed as personal estate and sold for default in payment of the tax. The purchaser was held a trespasser in entering without A.'s consent. "If it was personal estate, it was not taxable in L., any more than a ship touching at the wharf, owned by a resident of New York city:" *Flanders* v. *Cross*, 10 Cush. 514.

So, in construing a statute making personal property liable to taxation "in the town where the owners hire or occupy manufactories, stores, shops or wharves;" it was held to apply to non-resident owners of such property situate in the state of Massachusetts, whether they be individuals or corporations: *Blackstone Manufacturing Co.* v. *Inhab. of B.*, 13 Gray 488; *Leonard* v. *New Bedford*, 16 Gray 292. DEWEY, J., in the latter case, says: "We are aware of the distinction between real and personal estate in respect to the *loci rei sitæ*, and that the general rule as to the latter is that it follows the person of the owner, and in most cases in reference to taxes would be taxed in the place of the inhabiting owner. But as to goods, wares and merchandise, or any stock in trade, or any stock employed in manufacturing or the mechanical arts, where the business of selling or manufacturing is carried on in this Commonwealth, it has not been thought a violation of comity to a sister state to tax such goods or stock in the town where they were thus made the subject of sale or manufacture."

The rule is clear and well settled as to chattels having an actual permanent situs, in a state different from the owner, but there is some conflict of authority in reference to debts where the evidence of debt or the property on which it is secured has a situs different

from the owner: in cases of collateral inheritance tax, of stocks of corporations owned by non-residents, bonds or stocks of state and municipal corporations, negotiable paper held by non-residents, steamboats, goods consigned for sale, and goods in transitu through a state.

2. *Debts.*—Chattels are taxed where they are situated, but where is a debt situated? The creditor and the security for the debt may be in one state, the evidence of the debt in another, and the debtor in still another. Where the debt is not evidenced by negotiable paper, there are two views taken of the subject: one that the debt should be taxed at the residence of the debtor, the other that it should be taxed at the residence of the creditor or owner. The weight of authority is with the latter view, that the situs of the debt is that of its owner, that it is not property in the state of the debtor, but is property only where the owner resides: *State Tax on Foreign-held Bonds*, 15 Wall. 300; *Johnson* v. *Oregon City*, 3 Oregon 13; *Com.* v. *Hays*, 8 B. Monroe 1; *Railroad Co.* v. *Jackson*, 7 Wall. 262;[1] *Collins* v. *Miller*, 43 Ga. 336; *Hunter* v. *Supervisors of Page County*, 33 Iowa 376; *Johnson* v. *City of Lexington*, 15 B. Monroe 648. In the case first cited, the legislature of Pennsylvania enacted a law requiring the president, treasurer, or cashier of every company incorporated under the laws of the state, doing business in the state, and paying interest to its bondholders, should, before paying the same, retain from the bondholders or creditors a tax of 5 per centum, and pay over the same to the state treasurer semi-annually: 15 Wall. 302.[2] It was held not to be a valid exercise of the taxing power, and that it violated the obligation of the contract between the corporation and the bondholder, who was not a resident of Pennsylvania. As to the bondholders resident in the state, it was a valid exercise of the taxing power, the bonds as to residents being property within the state. FIELD, J., says, "Debts owing by corporations, like debts

[1] This case, criticised in 15 Wallace 318–19; reasoning disapproved, results affirmed; the fact that the mortgage securing the bonds was on property out of the state was unimportant; the important fact was that the creditor was out of the state.

[2] CLIFFORD, MILLER, DAVIS and HUNT, JJ., dissented from the opinion of the court delivered by Judge FIELD. *Davenport* v. *The Mississippi & Missouri Railroad*, 12 Iowa 539, fully sustains 15 Wallace. Mortgages on real estate in Iowa, were held not to be taxable in the hands of non-resident holders. *Tappan* v. *Merchants' National Bank*, 19 Wallace 499, S. P.

owing by individuals, are not property of the debtor in any sense; they are the obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is a misuser of terms. All the property there can be in the nature of things in debts of corporations, belongs to the creditors to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognised upon its simple statement. The bonds of the railroad company in this case are undoubtedly property, but property in the hands of the holders, and not property of the obligors. So far as they are held by non-residents of the state, they are property beyond the jurisdiction of the state."

The views expressed in the authorities cited above accord with those in which it is maintained that the tax is upon the person, and not upon property, except in the cases of non-resident real estate and local assessments, the tax being a contribution levied by government upon its citizens, for its support, and that the property of the citizen was looked to merely as a measure of the contribution which it was just that he should make for that purpose. A resident of Iowa deposited for safe-keeping in Illinois promissory notes for $7000, that were never brought into Iowa. They were held liable to be taxed in Iowa: *Hunter* v. *Supervisors of Page Co.*, 33 Iowa 376, 379. MILLER, J., says, "It is not the notes as such that are taxed, it is the debt; notes are mere evidences of the debt; the right to money due being in the resident in Iowa, the property must of necessity be at the place where he resides, irrespective of the situs of the evidence." The same principle is contained in another large class of cases, where the question is, in what county or town a person shall be taxed for debts due from solvent debtors, where the creditor and the debtor reside in different counties, or where the creditor is in one county and the mortgage or other security is in another. In California, the statute requires all property to be taxed in the county where it is situated. A., residing in San Francisco, held a mortgage on property in Mariposa county; it was foreclosed and recorded in that

county. It was held not liable to taxation in that county; the court saying: "The mortgage has no existence independent of the thing secured by it; a payment of the debt discharges the mortgage. The thing secured is intangible and has no situs distinct and apart from the residence of the holder. It pertains to and follows the person." *People* v. *Eastman*, 25 Cal. 603. So, the cash capital of a mercantile firm is taxed as personal estate, at the domicile of the owners: *St. John* v. *Mobile*, 21 Ala. 224. The residence of a banker is the place in which his capital as a banker is taxed. DAVIS, J.: "In such cases the maxim *mobilia personam sequuntur* would apply, and by fiction of law the situs of the property would be the personal residence of the owner." *Miner* v. *Village of Fredonia*, 27 N. Y. 155, 156; *People* v. *Supervisors of Chenango*, 11 N. Y. 563. The same principle is decided in many other cases: *People* v. *Whartenby*, 38 Cal. 461; *People* v. *McCreery*, 34 Cal. 459; *State* v. *Manchester*, 1 Dutch. 531; *St. Paul* v. *Merrill*, 7 Minn. 258. What constitutes the domicile of a party, is a question sometimes of much uncertainty; for purposes of taxation the residence of a party liable to assessment for personal property will be deemed to continue where it has been until a change is affirmatively shown, (*In the matter of Nichols*, 54 N. Y. 66), and a change cannot be effected by intention alone, without actual removal: *Stoddart* v. *Ward*, 31 Md. 562. But where an inhabitant of a town removes to another town in the Commonwealth, not intending to remain permanently, but with intention of not returning to his former home, and does not so return, he loses his domicile in the former town: *Mead* v. *Roxborough*, 11 Cush. (Mass.) 362. In case of death, the personal property of the decedent is taxed where he resided; it must have a situs somewhere, and none so appropriate during the settlement of the estate as the domicile of the late owner; but so soon as it is paid over to the heir, legatee, or trustee under the will, then it is taxed at the domicile of the person to whom it is paid; *Cornwall* v. *Todd*, 38 Conn. 443. A distinction is taken between domicile and residence: a person may have a domicile in one state and a residence in another; inhabitant implies a more permanent and fixed abode than resident, and frequently imports many privileges and duties which a mere resident could not claim or be subject to: *Supervisors of Tazewell Co.* v. *Davenport*, 40 Ill. 197, 204–5.

3. *The opposite View and a Modification of the Rule.*—Where

N., a resident of New York, owned certain property, consisting of debts due from solvent debtors, resident in Vermont, evidenced by promissory notes, and appointed an agent, residing in Vermont, to control and manage the property and collect and relend from time to time, as he should think proper, and allowed him a specified salary for so doing, it was held, the legislature had power to enact a law subjecting property so situated to taxation: *Catlin* v. *Hall*, 21 Verm. 152. It was claimed that the maxim *mobilia personam sequuntur* was a legal fiction, adopted from considerations of general convenience and policy, for the benefit of commerce, and to enable persons to dispose of their property, at their decease, agreeably to their wishes, without being embarrassed by their want of knowledge in relation to the laws of the country where the same is situated, and did not at all conflict with the authority of the state where property is actually situate, to make it bear its share of the burden of the government by taxation. The court say, "it is entirely just and equitable, that if persons residing abroad bring their property and invest it in this state for the purpose of deriving profit from its use and employment here, and thus avail themselves of the benefit and advantages of our laws for the protection of their property, it should yield its due proportion towards the support of the government which thus protects it."

The agents of George Parrish, a resident of Bohemia, had in their possession in the village of Ogdensburg, N. Y., a large amount of household furniture in the mansion of their principal in the village, consisting of silver and plated ware, mirrors, books, pictures and wines, $6000 in bank, contracts for the sale of land in the village nearly $20,000, at the date of assessment. This property was held liable to taxation in the village: *People* v. *Trustees of Village of Ogdensburg*, 48 N. Y. 390, 397–8.[1] EARL, J.: "The contracts represent the debts secured by them. They are the subject of larceny, and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be, and follow his person. And while, for some purposes in the law,

[1] This case, as well as *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224–236, overruled *Wilson* v. *The Mayor of New York*, 4 E. D. Smith, which adopted in its fullest sense the doctrine that personal estate has no situs away from the owner's domicile.

by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that for purposes of taxation this legal fiction does not, to the full extent, apply, and that such property belonging to a non-resident creditor may be taxed in the place where the obligations are held by his agent." So, where a person was domiciled at his death in Illinois, the holder of bonds of a private corporation of Missouri, which were transferred to Missouri for ancillary administration, the bonds were held liable to tax in Missouri. "The actual situs," say the court, "of personal property, and not the domicile of the owner, determines under the law of what state it shall be taxed:" *St. Louis County* v. *Taylor's Administrator*, 47 Mo. 594. And a party domiciled in Canada, dies there, owning personal property in North Carolina, ancillary administration is granted in North Carolina, and the personal property situate in that state was held liable to a succession tax: *Alvany* v. *Powell*, 2 Jones Equity 51.[1] It is to be noticed that in the first two cases, while the actual owner of the debts was a non-resident, yet the evidences of debt, the agent of the creditor, and debtor were all in the state exercising the power to tax, and the investments were regarded as permanent; and in the last two cases, the person who held the legal title to the property was under the control of the state exercising the power to tax. They are not cases like those *ante*, sect. 2, where the simple question was whether the property should be taxed at the residence of the debtor or that of the creditor.

In Illinois, under a statute requiring "all property, real or personal, in this state, all moneys, credits, investments in bonds, of persons residing in this state, or used or controlled by persons residing in this state, shall be taxed, &c.," loans made by a person in that state were held liable under the following state of facts: (*Supervisors of Tazewell County* v. *Davenport*, 40 Ill. 197.) D. was a man of mature years, unmarried, lived with his father in New York. He came to Pekin, in Tazewell county, every year, to loan money upon real estate, for himself, his father and other parties; the loans were permanent investments; principal and interest were reinvested on the same kind of security. The deeds were recorded in Tazewell and other counties, where the security was

[1] This case contains a fine discussion of the doctrine of the situs of personal property, and claims that the fiction that such property follows the person, has no application to revenue laws.

situated. While engaged in this business, Pekin was his headquarters; it was his post-office address; the banking-house of R. & Co., in Pekin, was his place of doing business generally. When R. & Co. quit business, he kept his office and did business with L. & Co., in the same city; had a table and desk there for the transaction of business, kept his valuable papers, and sometimes money, in the safe of their bank. When he went east, he left his papers in relation to loans not completed and notes maturing during his absence, in the safe, and sometimes in the care of R. & Co. Most of the notes were taken payable in Pekin, and if payable elsewhere, actually paid in Pekin. This was all D. did while in Pekin; he gave his whole attention to it. He stayed from one to four months, never leaving while he had money on hand, remaining away only during the hot and sickly season, and then returning. The loans, amounting to $250,000, were held liable to tax in Pekin; it was thought that D. was a resident of the state in the sense of the statute.

4. *Stocks of Corporations.*—Stock means an individual interest in the dividends as they are declared, and a right to a *pro rata* distribution of the effects of the corporation at dissolution of the corporation. It is in the nature of a chose in action, has no locality, and of necessity follows the person of the owner; the tax upon it is in the nature of a tax upon income, which of necessity is confined to the person of the owner: *Union Bank of Tennessee* v. *State*, 9 Yerger 490; Angell & Ames on Corporations, § 458; *McKeen* v. *Northampton County*, 49 Penna. St. 519; *Waltham* v. *Inhabitants of Waltham*, 10 Metc. (Mass.) 334;[1] *Barrington* v. *Berkshire*, 16 Pick. 572; *Webb* v. *Burlington*, 28 Verm. 188; *Oliver* v. *Washington Mills*, 11 Allen 268. In *McKeen* v. *Northampton*, the court say, "The defendant below, being a citizen of this state, it is clear he is subject personally to its power to tax, and that all his property accompanying his person, or falling legitimately within the territorial jurisdiction of the state, is equally within its authority. The interest which an owner of shares has in the stock of a corporation is personal. Whithersoever he goes it accompanies him, and when he dies his domicile governs its succession." *City of Richmond* v. *Daniel*, 14 Gratt. 385. SAMUELS, J., draws a distinction between stocks and credits, p. 389.

[1] This was a case of stock pledged to bank as collateral security, taxed to owner not to bank. See opinion as to nature of stock, citing English authorities.

In Iowa, shares of stockholders in corporations of that state, though owned by non-residents, are held liable to taxation in that state: *Faxton* v. *McCosh*, 12 Iowa 527, 530. The court says, "The interest of each shareholder is properly within the jurisdiction of the state. The certificate of shares may be with the person of the non-resident owner. But it is only paper evidence of such interest, the property it represents being within reach of the taxing power. The legislature has thought proper to provide that the property of this company, which has its existence by virtue of its enactments, shall bear its proportion of the burden of taxation in this way. Those who seek the benefit of this company do so with this understanding." At first blush this seems to sustain a different view from the cases just noticed, but a more particular examination will show that it does not. The decision was rendered upon the construction of the following statute: "Corporations shall be taxed through the shares of the stockholders, and when stockholders are non-residents, their interest shall be taxed in the county in which is situated their principal business office, within the state." The statute recognises the distinction that the corporation is a person liable to taxation for its corporate property and privileges, and is entirely distinct from the individual stockholders, who are liable to taxation in the state of their residence for their property, including stock in this corporation. It is the corporation that is taxed, and the shares of stockholders are looked to merely as a measure of the tax, which it is deemed proper this corporation should pay. The tax is upon the corporation for the privilege of its existence in the state. The court distinguish the case from *Davenport* v. *Mississippi & Missouri Railroad Co.*: "the property is in the state, owned by the mortgagor, but the case does not decide that the property of mortgagor upon which the debt is secured, is not liable to tax, but that the debt secured owned by the non-resident shall not be taxed to the mortgagee:" 12 Iowa 539. In Pennsylvania several late cases have extended the principle of *Faxton* v. *McCosh*, in such a manner as to entirely overrule the earlier case of *McKeen* v. *Northampton County*, already cited; *Maltby* v. *Reading & Columbia Railroad Co.*, 52 Penna. St. 140; *Pittsburgh, Fort Wayne & Chicago Railroad Co.* v. *Commonwealth*, 66 Penna. St. 73; *The Cleveland, Painesville & Ashtabula Railroad Co.* v. *Commonwealth*, 5 Casey 370.[1] The first of these cases

[1] These cases were overruled in *State Tax on Foreign-held Bonds*, 15 Wall. 300.

arose out of an act laying a tax "on mortgages, money owing by solvent debtors, whether by promissory notes, penal or single bill, bond or judgment," a section of which requires the officers of any corporation which pays interest on which a state tax is imposed, before payment of the same, to retain the state tax and pay the same to the treasurer of the state. Maltby, a non-resident holder of certain coupons, due before the passage of the act, presented them for payment. The company insisted on retaining the tax of three mills on each dollar of the bonds. Maltby brought suit, and the court held the company could deduct the tax. WOODWARD, J.: "There must be jurisdiction over either the property or the person of the owner, else the power of taxation cannot be exercised, but where the property is within our jurisdiction and enjoys the protection of our state government, it is justly taxable, and it is of no moment that the owner who is required to pay the tax resides elsewhere. The duties of sovereign and subject are reciprocal, and any person who is protected by government in his person or property may be compelled to pay for that protection. * * * What would the plaintiff's loan be worth if it were not for the franchises conferred upon the company by the Commonwealth, franchises which are maintained and protected by the civil and military power of the Commonwealth? Then it would seem that this kind of property, more than any other, ought to contribute to the support of the state government, and I suppose it is upon this ground that the legislature discriminates between corporation loans and private debts as objects of taxation." These views are commented on by FIELD, J., in *State Tax on Foreign-held Bonds*, 15 Wall. 322. "The amount of all which is this: that the state which creates and protects a corporation ought to have the right to tax the loans negotiated by it, though taken and held by non-residents, a proposition which it is unnecessary to controvert. The legality of a tax of that kind would not be questioned, if in the charter of the company, or its certificates of loan, the liability of the loan to taxation were stated. The tax in that case would be in the nature of a license tax for negotiating the loan, for in whatever manner made payable, it would ultimately fall on the company as a condition of effecting the loan, and the parties contracting with the company would provide for it by proper stipulations." The error in the reasoning of WOODWARD, J., results from overlooking the distinction alluded to in commenting on *Faxton* v. *McCosh*, between the corporation and the stockholders of

the corporation; the corporation being a creature of the state, it may prescribe the terms of its existence in the form of a bonus, a tax for the privilege of exercising its functions in the state, and that tax, as Judge FIELD says, may be in the form of a tax upon its loans. But the tax here was not a tax upon the corporation; it was a tax upon the creditors of the corporation, upon parties contracting with a corporation at a time when the state which created it had not burdened it with a tax upon its borrowing power, and was a violation of the obligation of the contract between the borrower and lender. The shares of stock in the National Banks are an exception to the rule stated in this section; the Acts of Congress as to them annul the general rule and impart to such shares for some purpose the local character and fixity of real estate. They are taxed where the bank is situated: *Providence Inst. for Savings & Jewell* v. *City of Boston*, 101 Mass. 575: *Tappan* v. *Merchants' Nat. Bank*, 19 Wall. 490.

W. H. B.

NORFOLK, VA.

(*To be continued.*)

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

CHARLES F. BOLLMAN *v.* CLARK M. LOOMIS.

The policy of the law forbids that a person acting as the friend and confidential adviser of a purchaser, should at the same time be secretly receiving compensation from the seller for effecting the sale; and a contract for such compensation is void.

ASSUMPSIT, upon the common counts; brought by appeal from a justice to the Court of Common Pleas of New Haven county. The following facts were found by the court:

In the latter part of the year 1872, Mrs. W. C. Robinson called at the store of the defendant to look at pianos which he kept for sale. She saw there one which pleased her, so far as the outside appearance was concerned, but not being willing to purchase entirely upon her own judgment, it was suggested that the plaintiff, who was a friend of F. A. Robinson, a brother of her husband and an acquaintance of hers, should examine the instrument. The plaintiff was to some extent an expert, and his judgment was much relied upon by the Robinsons. Before this time the